

ENDORSED  
FILED  
ALAMEDA COUNTY

DEC 20 2000

CLERK OF THE SUPERIOR COURT  
By GLORIA J. AN MATHEWS

Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA

PEOPLE OF THE STATE OF  
CALIFORNIA, ex rel. Edwin F. Lowry,  
Director, California Department of Toxic  
Substances Control,

Plaintiffs,

v.

EVERGREEN OIL, INC., a California  
Corporation, EVERGREEN  
ENVIRONMENTAL SERVICES, a  
California Corporation, INC. and Does 1-10,

Defendants.

Case No. H196590-8

JUDGMENT PURSUANT TO  
STIPULATION

Plaintiff, People of the State of California, ex rel. Edwin Lowry, Director, Department  
toxic Substances Control ("DTSC") and Defendants Evergreen Oil, Inc. ("Evergreen Oil") a  
Evergreen Environmental Services (collectively "Evergreen") having presented and filed with  
the Court a written Stipulation for Entry of Final Judgment (the "Stipulation"), and good cause  
appearing for approval of said Stipulation,

IT IS HEREBY ORDERED that judgment is awarded in favor of Plaintiff and against  
Defendants on all causes of action and for civil penalties in the amount of \$625,000 and  
administrative costs in the amount of \$200,000.

1 IT IS FURTHER ORDERED that Defendants shall *make* payment of civii penalties a  
2 administrative costs described in the Stipulation as described in sections 6, 7, and 9 of the  
3 Stipulation. These obligation shall be joint and several obligations of each of the Defendants

4 IT IS FURTHER ORDERED that:

- 5 1. Evergreen Oil shall comply with all terms and conditions of the hazardous was  
6 management facility permit issued by DTSC to Evergreen Oil on October 10,  
7 1985 Permit ("the 1985 permit.") This requirement includes but is not limited  
8 the following: Evergreen Oil will nor accept any wastes that it ~~is~~ not authorize  
9 to accept pursuant to the 1985 Permit; Evergreen Oil will not employ any  
10 treatment processes that are not authorized by the 1985 Permit; and Evergreen  
11 Oil will not store or treat any hazardous waste in a tank at the Newark Facility  
12 which has not been authorized in the 1985 Permit for management of that  
13 hazardous waste. For the purpose of these provisions, the 1985 Permit shall b  
14 deemed to include all permit modifications and temporary authorizations  
15 approved by DTSC pursuant to California Code of Regulations sections  
16 66270.41 and 66270.42.
- 17 2. Evergreen Oil will not accept any hazardous waste (including used oil) at the  
18 Newark Facility that contains greater than 2500 parts per million of halogens.  
19 Moreover, Evergreen Oil will not accept any hazardous waste at the Newark  
20 Facility that contains greater than 1000 parts per million halogens unless it has  
21 first rebutted the rebuttable presumption of Health and Safety Code section  
22 25250.1(a)(1)(B)(v), including the requirements of Title 22, California Code of  
23 Regulations section 66279.10.
- 24 3. Evergreen Oil shall not burn any hazardous waste, used oil, or re-refinery  
25 process streams, including but not limited to all process streams collected in  
26 HA-401 and V-401 at ihe Newark Facility. This prohibition does not apply to  
27 gaseous material, as iong as the gaseous material is not a "contained gaseous  
28 material" as defined in Health and Safety Code § 25110.11.

1 3.1. Pending DTSC's final determination on Evergreen Oil's request for a  
2 permit modification concerning the storage and offsite shipment of these  
3 materials, Evergreen Oil is hereby authorized to transfer via pipeline the  
4 process material collected in V-401 to tank T-501C, and then to  
5 transport this material offsite as a hazardous waste, which is further  
6 described in Evergreen Oil's letter to DTSC of November 1, 2000.  
7 Tank T-501C shall only be used to store these materials. The November  
8 1, 2000 letter, which is attached to the Stipulation as Attachment E,  
9 includes Evergreen's representation that it may make this modification  
10 without introducing any substantial risk of upset, release or other  
11 environmental hazard.

12 3.2. The prohibition set forth in paragraph 3 is hereby stayed until Evergreen  
13 Oil has obtained all permits or other authorizations and has made the  
14 changes necessary to implement the authorization described in paragraph  
15 3.1 or until 180 days from the Effective Date, whichever comes first. In  
16 the event that Evergreen Oil will be unable to obtain the required  
17 authorizations or modify the plant within 180 days of the Effective Date,  
18 DTSC will give Evergreen a reasonable opportunity to meet and confer  
19 with DTSC on the causes of the delay before DTSC moves for-contempt  
20 or otherwise asks the Court to enforce this provision.

21 4. Evergreen Oil shall only offload incoming used oil into pre-select tanks that  
22 DTSC has approved for that purpose. Paragraph 10.4 of the Stipulation  
23 identifies the tanks that are currently approved for that purpose.

24 5. Evergreen Oil shall not transfer used oil into a railcar, truck or other container  
25 unless that oil is to be transported offsite as a hazardous waste under a  
26 hazardous waste manifest.

27 6. Evergreen Oil shall not test and certify (in accordance with Health and Safety  
28 Code sections 25250.1(b), 25250.18 and 25250.19) any used oil that is not

1 stored in a tank that DTSC has approved for that purpose. Paragraph 10.6 of  
2 the Stipulation identifies the tanks that are currently approved for that purpose.

3 7. Evergreen Environmental Services shall rest each shipment of used oil received  
4 at used oil transfer facilities owned or operated by it for halogens as required in  
5 Title 22, California Code of Regulations section 66279.10(a)(4).

6 IT IS FURTHER ORDERED that the terms of this injunction may be modified only by  
7 order of this Court.

8  
9 DATED **DEC 18 2000** **YOLANDA N. NORTHBRIDGE**  
10 **JUDGE OF THE SUPERIOR COURT**

11 Prepared by:

12 3111 LOCKYER, Attorney General  
13 of the State of California  
14 RICHARD FRANK  
15 Chief Assistant Attorney General  
16 THEODORA BERGER,  
17 Senior Assistant Attorney General  
18 AMES R. POTTER, State Bar No. 166992  
19 BENNETH BROWNE  
20 Deputy Attorneys General  
21 100 South Spring Street, Suite 500  
22 Los Angeles, California 90013  
23 Telephone: (213) 897-2640  
24 Attorneys for Plaintiff  
25  
26  
27  
28

DECLARATION OF SERVICE  
VIA UPS OVERNIGHT MAIL

Case Name: People of the State of California v.  
Evergreen Oil, Inc., et al.

Case No: Alameda Superior Court Case No. H196590-8

I declare:

I am employed in the County of Los Angeles, California. I am 18 years of age or older and not a party to the within entitled cause; my business address is 300 S. Spring Street, Los Angeles, California 90013.

On November 15, 2000, I served the attached

MOTION FOR ENTRY OF JUDGMENT PURSUANT TO STIPULATION; STIPULATION FOR SETTLEMENT AND ENTRY OF JUDGMENT; [PROPOSED] JUDGMENT PURSUANT TO STIPULATION

by placing a true copy thereof enclosed in a sealed envelope for overnight delivery by UPS Courier Service at Los Angeles, California, addressed as follows:

Tim G. Lignoul, Esq.  
Trutanich-Michel, LLP  
407 North Harbor Boulevard  
San Pedro, CA 90731-3356

I declare under penalty of perjury the foregoing is true and correct and that this declaration was executed on November 15, 2000 at Los Angeles, California.

ERLINDA L. LITERATUS



Signature

BILL LOCKYER, Attorney General  
of the State of California  
RICHARD M. FUNK  
Chief Assistant Attorney General  
THEODORA BERGER  
Senior Assistant Attorney General  
DONALD ROBINSON  
Supervising Deputy Attorney General  
JAMES R. POTTER (State Bar No. 166992)  
BENETH BROWNE  
Deputy Attorney General  
300 South Spring St  
Los Angeles, California 90013  
Telephone: (213) 897-2637  
Fax Number: (213) 897-2802

ENDORSED  
FILED  
ALAMEDA COUNTY

DEC 20 2000

CLERK OF THE SUPERIOR COURT  
By GLORIA J. AN MATHEWS

Deputy

Attorneys for Plaintiffs, People of the State of  
California, *ex rel* Edwin F. Lowry, Director,  
California Department of Toxic Substances Control

SUPERIOR COURT OF THE STATE OF CALIFORNIA-

IN AND FOR THE COUNTY OF ALAMEDA

PEOPLE OF THE STATE OF CALIFORNIA, *ex rel* Edwin F. Lowry, Director, California Department of Toxic Substances Control,

Case No. H196590-8

Plaintiffs,

STIPULATION FOR  
SETTLEMENT AND ENTRY OF  
JUDGMENT

v.

VERGREEN OIL, INC., a California  
corporation, EVERGREEN ENVIRONMENTAL  
SERVICES INC., a California Corporation, and  
does 1-10,

Defendants.

Plaintiff, People of the State of California, *ex rel* Edwin Lowry, Director, Department  
Toxic Substances Control ("DTSC"), and Defendants Evergreen Oil, Inc. ("Evergreen Oil")  
and Evergreen Environmental Services ("Evergreen Environmental Services") (collectively  
"Evergreen") hereby enter into *this* Stipulation for Settlement and Entry of Judgment  
("Stipulation") and stipulate as follows:

I. THE COMPLAINT

1.1. On June 14, 1999, the People of the State of California, *ex rel* Edwin Lowry,

Director, Department of Toxic Substances Control, filed a Second Amended Complaint for preliminary and permanent injunctive relief and civil penalties pursuant to the California Hazardous Waste Control Law, Health and Safety Code sections 25100 et seq. ("HWCL") against Evergreen Oil **and** Evergreen Environmental Services as the owners and operators of various hazardous waste management facilities. Evergreen Oil owns and operates a used oil rerefinery at 6880 Smith Avenue, Newark, California ("Newark Facility.") Evergreen Environmental Services, at all times relevant herein, has owned and/or operated hazardous waste transfer stations at Road 30-B (KC Farm), Davis ("Davis Facility"); 4139 North Valentine, Fresno ("Fresno Facility"), 16604 South San Pedro Street, Carson ("Carson Facility"); 2549 Scott Avenue, Chico ("Chico Facility"); 501 Clear Creek Road, Redding ("Redding Facility"); 777 South Locust Avenue, Ripon ("Ripon Facility"); 745-A West Betteravia, Santa Maria ("Santa Maria"); 855 Lake Herman Road at Columbus, Vallejo ("Vallejo Facility"). The Complaint alleges violations of the requirements for acceptance, storage, handling, **and** treatment of hazardous waste.

1.2. The Complaint, which is attached hereto as Attachment A, alleges that Defendants violated and continue to Violate certain provisions of the HWCL, certain of its regulations (California Code of Regulations, title 22, Div. 4.5, §§ 66000 et seq., hereinafter "Title 22"), Evergreen Oil's 1985 hazardous waste management facility permit, as modified, (hereinafter "1985 Permit"), and various authorizations given to Evergreen Environmental. The Complaint requests injunctive relief **and** penalties against each of the defendants named therein.

## JURISDICTION

DTSC and Defendants hereby agree that the Superior Court for the County of Alameda as subject matter jurisdiction over the matters alleged in the Complaint **and** personal jurisdiction over the parties to this Stipuation. The Judgment Pursuant to Stipuation is

attached to this Stipulation as Attachment B.

### 3. WAIVER OF HEARING AND TRIAL AND ENTRY OF JUDGMENT

By signing and entering into this Stipulation, Defendants hereby waive their right to a hearing and/or trial on the violations alleged in the Complaint. Further, Defendants and DTSC hereby request this Court to enter Judgment for Plaintiff as provided herein.

### 4. SETTLEMENT

DTSC and Defendants hereby jointly enter into this Stipulation pursuant to a compromise and settlement of disputed claims for the purpose of avoiding prolonged and complicated litigation and furthering the public interest. Time is of the essence in this agreement.

### 5. ADMISSION OF VIOLATIONS

5.1. Defendants neither admit or deny any of the allegations contained in the Complaint. However, Defendants agree that, except as stated below, the allegations contained in the Complaint will be deemed admitted for all purposes in any civil or administrative action or proceeding involving DTSC and any or all of the Defendants. The parties agree that DTSC may use the deemed admissions for any purpose in any such action or proceeding. Notwithstanding the foregoing, the allegations contained in Paragraphs 43, 49, 65, 66, 71, 72, 75, 81, 85, 88, 91, 95, 98, and 99 of the Complaint are not deemed admitted by defendants for any purpose in any action or proceeding.

5.2. DTSC agrees not to introduce evidence of the admissions in paragraph 5.1 for any purpose in People v. Evergreen Environmental et al, L o Angeles County Superior Court No. BC 223679 or in any proceeding involving Evergreen Oil's pending application to DTSC for a permit renewal for the Newark Facility. However, DTSC reserves all of its rights under law to introduce any other evidence of the violations alleged in the Complaint in these actions or any other civil or administrative action. DTSC further reserves any presumptions to which it might be entitled in any such civil or administrative action.



6. PAYMENT OF ADMINISTRATIVE COSTS

6.1. DTSC represents that since 1993 DTSC has incurred in excess of \$200,000 for enforcement activities at the Evergreen facilities. This amount includes but is not limited to staff time and legal costs.

6.2. Defendants shall reimburse DTSC the sum of \$200,000 for enforcement and administrative costs expended by DTSC in connection with these defendants. This amount shall be due **and** owing on the Effective Date, but shall be **paid** as follows:

6.2.1. Defendants shall pay the sum of \$10,000 within five days of the Effective Date.

6.2.2. Defendants shall pay the remaining sum of \$190,000 in monthly installments of \$10,000.00 with payments due on the first of the month beginning January 1, 2001 and continuing until paid in full.

6.3. Defendants shall make the payments required by this section in accordance with the procedures specified in Section 9 of this Stipulation.

6.4. Defendants shall secure the payment of monthly installments in paragraph 6.2 by the Lien described in section 7.4.

PAYMENT OF CIVIL PENALTIES TO DTSC

7.1 Defendants shall pay DTSC the sum of \$ 625,000 in civil penalties which shall be due and owing on the Effective Date. The civil penalties shall be paid in monthly installments of \$10,000.00 with payments due on the first of the month. Payments shall begin immediately following the last monthly payment for administrative costs, and in no event later than August 1, 2002, and shall continue in monthly installments until paid.

7.2 Defendants shall pay simple interest on the civil penalties in the amount of six [6] percent, which shall accrue from the Effective Date, except that no interest shall be due on civil penalties for which a credit is granted as provided in Section 8 of this Stipulation after that credit, or partial credit, is granted.

1 7.3. Defendants shall make the payments required by this section in accordance with  
2 the procedures specified in Section 9 of this Stipulation.

3 7.4. The entire amount of the civil penalty in the sum of \$ 625,000 and the  
4 remaining administrative costs in the amount of \$190,000 shall be secured by a  
5 lien in favor of DTSC on the land and plant at the Newark facility. This lien  
6 shall not extend to the equipment, which includes trucks and other vehicles. The  
7 Lien shall be in a form approved by DTSC **and** shall provide commercially  
8 reasonable security for the obligations contained herein. The Lien shall be due  
9 and payable on the sale of the Newark facility or in the event that Evergreen Oil  
10 transfers operation of the Newark facility to another entity.

11 7.4.1. The Lien shall initially be in the amount of \$ 815,000. Defendants may  
12 apply annually to DTSC for permission to reduce the amount of the  
13 Lien. Defendants may make that application on the basis of payments  
14 that Defendants have made and credits that DTSC has awarded.

15 7.4.2. After the Lien is recorded, defendants shall not permit or authorize any  
16 act which will reduce the seniority of the security or allow any other  
17 debt secured by the land or facility to have a higher priority. If  
18 Defendants realize that a tax or any other lien may, by force of law,  
19 lessen or reduce the value of the Lien, Defendants will promptly attempt  
20 to find alternative mechanisms of securing that debt acceptable to DTSC.  
21 Defendants shall notify DTSC in writing and by phone within one day of  
22 learning that any lien may lessen or reduce the value of the Lien.

23 7.4.3. Defendants shall attach the Lien **and** any modifications thereto to the  
24 property records at the County Recorder's office within five days of the  
25 issuance of the Lien or the modification.

26 8. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

27 8.1. Upon application by Defendants, DTSC in its sole discretion may give credit  
28 for up to \$170,000 of the civil penalties for services that Defendants provide

free of charge to local government household hazardous waste collection operations.

3.1.1 The services that Defendants may provide for this credit are transportation of household hazardous waste from the local agencies' collection points to an authorized facility and/or the management of household hazardous waste at an Evergreen facility. Defendants may only receive credit for those services that they are legally authorized to provide **and** Defendants must provide the services in strict compliance with the HWCL and all other applicable laws and ordinances.

8.1.2 To receive the credit Defendants must submit an application which includes clear and complete documentation of the services provided. The documentation must include a reasonably complete description by Defendants of the services they provided and the fair market value of those services. A responsible official for the local government agency must sign the application and attest that the local government agency received the described services free of charge and that the value of the services provided was for the amount stated in the application. DTSC reserves the right at its sole discretion to independently determine the value of the services provided and to grant a credit of that amount. DTSC will give credit on a dollar for dollar basis on its final determination of the value of the services provided. Defendants may submit an application for this credit semiannually.

8.1.3. Within sixty days of receiving Defendants' application, DTSC will notify Defendants of the amount of credit that DTSC will grant for the services provided in the application submitted by the Defendants. DTSC will grant the credit only for services that Defendants provide by January 1, 2003. All applications for credit under this paragraph must be submitted to DTSC no later than March 1, 2003.

8.1.4. If at any time, in the course of providing these services, Defendants violate any provision of the HWCL related to the provision of these services, upon learning of the violation(s) DTSC shall contact Defendants and seek a resolution of the violation(s). DTSC at its discretion may terminate Defendants' eligibility ~~for~~ the credit for any Class I violations (Health and Safety Code section 25110.8.5) of the HWCL that Defendants commit in the course of providing these services.

8.2. Upon application by Defendants, DTSC may grant Defendants credit ~~for~~ up to \$50,000 in civil penalties for monies that Defendants contribute to the City of Newark for installation and initial operation of emergency response equipment as described in the letter dated October 13, 2000 from the City of Newark Fire Chief to Mr. Jim Potter, Deputy Attorney General, which is attached to this agreement as Attachment C.

8.2.1. DTSC will grant the credit only if the application contains complete documentation of the amount of funds that have been provided to the City, and documentation that the funds have been used for installation and initial operation of the equipment. A responsible official for the City of Newark must sign the application and attest ~~that~~ the City used the funds to install and begin operation of the equipment. Documentation showing that the funds were expended by the City for this system must be included in the application. DTSC will give credit on a dollar for dollar basis on its final determination that monies were contributed to and expended by the City of Newark on the emergency notification system.

8.2.2. Within sixty days of receiving Defendants' application, DTSC will notify Defendants of the amount of credit that DTSC will grant for the monies contributed by the Defendants. DTSC will grant the credit only

for monies that Defendants provide by January 1, 2002. All applications for credit under this paragraph must be submitted to DTSC no later than March 1, 2002.

8.3. Upon application by Defendants, DTSC in its sole discretion may credit Defendants for up to \$180,000 of the civil penalties for money Evergreen Oil spends on a comprehensive environmental management systems (hereinafter "EMS") evaluation and report based on an EMS manual to be adopted by Evergreen Oil.

8.3.1. The compliance audit and the EMS evaluation and report shall be performed by a DTSC approved, independent, qualified third party.

8.3.2. Evergreen Oil shall conduct an EMS evaluation as described on Attachment D to this Stipulation. Within 90 days of the Effective Date, Evergreen Oil shall provide to DTSC a written schedule including milestones, for conducting the Initial EMS Review and Evaluation. The schedule will provide that the Comprehensive EMS Review and Evaluation Report will be completed by two years from the Effective Date. At the time Evergreen Oil provides the schedule it shall also provide DTSC, in writing, the name, affiliation and address of the independent third party proposed by Evergreen Oil to conduct the Initial EMS Review and Evaluation and a demonstration that the third party satisfies the proficiency criteria described in ISO 14012 "Guidelines for environmental auditing - Qualification criteria for environmental auditors" or American Society for Testing of Materials ("ASTM") Provisional Standard 12-95 - Provisional Standard Guide for Study and Evaluation of An Organizations Environmental Management Systems.

8.3.3. Evergreen Oil may also include in the EMS review an audit to determine if Evergreen Oil is in full compliance with the HWCL. The audit shall include detailed facility inspections, comprehensive documents reviews,

and employee interviews **and** shall conform with the highest standards for such audits. Evergreen Oil shall give its full cooperation to the auditor. Upon completion of the audit, the auditor shall produce a detailed written report and shall send that report directly to DTSC and to Evergreen Oil.

8.3.4. In the event that 1) Evergreen Oil has expended \$160,000 on the EMS system review, 2) Evergreen Oil has submitted an Environmental Management System Manual, 3) DTSC has approved that Manual (and such approval shall not be unreasonably refused), **and** 4) the consultant has not prepared the final Comprehensive EMS Review and Evaluation Report, then Evergreen Oil Company may instruct the consultant to stop work and prepare a comprehensive final report.

8.4. DTSC may only give credit for penalties and interest that DTSC has not collected **and** which are not yet due from Defendants under the payment schedule provided in Section 7 of this Stipulation. Nothing in this Stipulation shall be interpreted to require DTSC to refund any penalties that it has collected. Nor shall anything in this Section 8 of this Stipulation, regarding credits, be construed to extend the due date of any payment owed by Defendants.

#### MANNER OF MAKING PAYMENTS

9.1. All payments required pursuant to this Stipulation shall be made by certified or cashier's check made payable to DTSC and shall bear the title and case number as follows "People v. Evergreen Oil et. al., No. H196590-8, Alameda County Superior Court."

9.2. Defendants shall send all payments to:

Department of Toxic Substances Control  
Accounting Office  
400 P Street, 4<sup>th</sup> Floor  
P.O. Box 806  
Sacramento, CA 95812-0806

Attention: Karen Poon

A copy of all payments shall be sent to :

Florence Gharibian  
Department of Toxic Substances Control  
1011 N. Grandview Ave  
Glendale, California 91201

Richard Sherwood  
Department of Toxic Substances Control  
Office of Legal Counsel  
400 P Street, 4th Floor  
P.O. Box 806  
Sacramento, CA 95812-0806

9.3. Where a due date falls on a Saturday, Sunday or on a federal or state holiday,  
then the due date shall be the close of business on the next working day.

#### 10. INJUNCTIVE PROVISIONS

Defendants agree to an injunction as set forth in this paragraph and further agree that the provisions of this injunction shall be set forth in the judgment entered against Defendants. The parties acknowledge that Evergreen Oil has applied, and may in the future apply, to TSC for modifications of the 1985 permit, for temporary authorizations at the Newark facility and for a renewal of the 1985 permit. The parties agree that should DTSC authorize any activities prohibited by the injunction, DTSC will apply to the court for a modification of the judgment. Any change in Evergreen's permit status that is contrary to the language of the injunction will not take effect until the modified judgment is issued by the Court.

10.1. Evergreen Oil shall comply with all terms and conditions of the 1985 Permit.

This requirement includes but is not limited to the following: Evergreen Oil will not accept any wastes that it is not authorized to accept pursuant to the 1985 Permit; Evergreen will not employ any treatment processes that are not authorized by the 1985 Permit; and Evergreen Oil shall not store or treat any hazardous waste in a tank at the Newark Facility which has not been authorized in the 1985 Permit for management of that hazardous waste. For the purpose of these provisions, the 1985 Permit shall be deemed to include all permit

modifications and temporary authorizations approved by DTSC pursuant to California Code of Regulations sections 66270.41 and 56270.42.

10.2. Evergreen Oil will not accept any hazardous waste (including used oil) at the Newark Facility that contains greater than 2500 parts per million of halogens. Moreover, Evergreen Oil will not accept any hazardous waste at the Newark Facility that contains greater than 1000 parts per million halogens unless it has first rebutted the rebuttable presumption of Health and Safety Code section 25250.1(a)(1)(B)(v), including the requirements of Title 22, California Code of Regulations section 66279.10.

10.3. Evergreen Oil shall not burn any hazardous waste, used oil, or re-refinery process streams, including but not limited to all process streams collected in HA-401 and V-401 at the Newark Facility. This prohibition does not apply to gaseous material, as long as the gaseous material is not a "contained gaseous material" as defined in Health and Safety Code § 25110.11.

10.3.1. Pending DTSC's final determination on Evergreen Oil's request for a permit modification concerning the storage and offsite shipment of these materials, Evergreen Oil is hereby authorized to transfer via pipeline the process material collected in V-401 to tank T-501C, and then to transport this material offsite as a hazardous waste, which is further described in Evergreen Oil's letter to DTSC of November 1, 2000. Tank T-501C shall only be used to store these materials. The November 1, 2000 letter, which is attached to this Stipulation as Attachment E, includes Evergreen's representation that it may make this modification without introducing any substantial risk of upset, release or other environmental hazard. Evergreen Oil agrees that within twenty days of Evergreen Oil's execution of this Stipulation, Evergreen Oil will apply for all other permits or authorizations required by



local, state or federal law to implement the plant modification described in this paragraph. Evergreen Oil agrees to make its best efforts both to obtain those authorizations and to modify the plant as quickly as possible.

10.3.2. The prohibition set forth in paragraph 10.3 is hereby stayed until Evergreen Oil has obtained all permits or other authorizations and ~~has made the~~ changes necessary to implement the authorization described in paragraph 10.3.1 or until 180 days from the Effective Date, whichever comes first. In the event that Evergreen Oil will be unable to obtain the required authorizations or modify the plant within 180 days of the Effective Date, DTSC will give Evergreen a reasonable opportunity to meet and confer with DTSC on the causes of the delay before DTSC moves for contempt or otherwise asks the Court to enforce this provision.

10.3.3. In agreeing to the stay specified in paragraph 10.3.2, DTSC is not condoning or authorizing Evergreen's current practice of burning the HA-401 or V-401 liquids.

10.3.4. As stated in paragraph 12, DTSC agrees to use its best efforts to review and process Evergreen Oil's application for a permit modification regarding the HA-401 and V-401 liquids.

10.4. Evergreen Oil shall only offload incoming used oil into the preselect tank; 501A, 501B, 501C, 512A, and 512B. However, it may also offload used oil designated for fuel blending into tanks 505, 507, 502, and 509. Because this list of tanks may be modified by permit modifications and/or temporary authorizations, the Judgment references this paragraph but does not identify the individual tanks.

10.5. Evergreen Oil shall not transfer used oil into a railcar, truck or other container unless that oil is to be transported offsite as a hazardous waste under a

hazardous waste manifest.

10.6. Evergreen Oil shall not test and certify (in accordance with Health and Safety Code sections 25250.1(b), 25250.18 and 25250.19) any used oil that is not stored in tanks 502, 507, 505, 509, 510, or 504. However, Evergreen Oil may test and certify used oil that has been re-refined, but only if the oil is stored in the re-refinery product tanks. Because this list of tanks may be modified by permit modifications and/or temporary authorizations, the Judgment references this paragraph but does not identify the individual tanks.

10.7. Evergreen Environmental Services shall test each shipment of used oil received at used oil transfer facilities owned or operated by it for halogens as required in Title 22, California Code of Regulations section 66279.10(a)(4).

10.8. The Parties agree that the prohibitions described below currently apply to the Newark Facility. However, the Parties acknowledge that Evergreen Oil has submitted an application for temporary authorization and/or permit modification which if granted by DTSC, will modify these prohibitions. DTSC agrees that the prohibitions described below will not be included in the Judgment at this time. However Defendants agree that in the event DTSC does not issue the temporary authorizations, or if DTSC issues the temporary authorizations but they expire before DTSC makes a decision on Evergreen's permit modifications or application to renew Evergreen's hazardous waste facility permit, then Evergreen will stipulate to and shall not oppose any motion by DTSC to modify the injunction by adding the following provisions:

10.8.1. Evergreen Oil will not accept any hazardous waste at the Newark Facility that is designated with any waste code other than 221, nor any hazardous waste that is not used oil as defined in H&SC 25250.1.

10.8.2. Evergreen Oil will not accept any hazardous waste at the Newark Facility that contains greater than thirty percent water.

10.3.3. Evergreen Oil shall not operate the Newark Facility at a rate above 17 gallons per minute and shall not process more than 8 million gallons of hazardous waste per year.

## 11. NOTICE

11.1. Unless otherwise specified in this Stipulation, all submissions and notices required by this Stipulation shall be sent as follows:

### For DTSC:

Florence Gharibian, Branch Chief  
Southern California Branch  
Statewide Compliance Division  
Department of Toxic Substances Control  
1011 N. Grandview Ave  
Glendale, CA 91201

Richard Sherwood, Esq.  
Department of Toxic Substances Control  
Office of Legal Counsel  
400 P Street, R 4480  
P.O. Box 806  
Sacramento, CA 95812-0806

### For Defendants:

Brian Higgins  
6880 Smith Avenue  
Newark, CA 94560-4224

Carmen Trutanich  
Trutanich • Michel, LLP  
407 N. Harbor Blvd.  
San Pedro, CA 90731-3356

11.2. All approvals and decisions of DTSC regarding any matter requiring approval or decision under the terms of this Stipulation shall be communicated to Defendants in writing by Florence Gharibian, Branch Chief, DTSC Southern California Branch, Statewide Compliance Division or her designee. No advice, guidance, suggestions or comments by employees or officials of DTSC regarding submittals or notices shall be construed to relieve Defendants of their obligations under this Stipulation.

## 12. PERMITS AND AUTHORIZATIONS

Evergreen Oil is applying to DTSC for Temporary Authorization, Permit Modifications and RCRA Permits. Time is of the essence for these application processes. Evergreen Oil agrees to use its best efforts to produce complete, accurate and proper applications and submittals and to timely respond to all requests for further information. DTSC agrees to use its best efforts to timely review and respond to Evergreen Oil's applications.

## 13. SCOPE AND ENFORCEMENT OF THIS STIPULATION AND JUDGMENT

13.1. This Stipulation and Judgment shall apply to and be binding upon DTSC and Defendants and their directors, officers, employees, agents successors and assigns, including executors and/or trustees of Defendants.

13.2. This Stipulation settles only those matters covered in the Complaint and for the violations specifically set forth in reports of violations that DTSC issued to Evergreen Oil or Evergreen Environmental Services through April 1, 2000. This Stipulation does not settle the allegations of People v. Evergreen Environmental Services, Inc. et al, Los Angeles Superior Court Number BC 223679 (the "Chalk Cliffs" matter) or any violations of law directly related to that matter.

13.3. Nothing in this Stipulation shall constitute or be construed as a satisfaction or release from liability for any violations of law outside the HWCL. Except as expressly provided in this Stipulation, nothing in this Stipulation is intended nor shall it be construed to preclude any government agency, department, board or entity from exercising its authority under any law, statute or regulation.

13.4. Except as expressly provide herein, nothing in this Stipulation shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current or future activities of Defendants. In particular this Stipulation preserves all rights DTSC may have to compel Defendants to close, perform and/or pay the costs of environmental response actions at the Newark Facility or any other facility owned or operated by the

Defendants.

13.5. In the event that Defendants fail to comply with the provisions of this Stipulation, including but not limited to making timely payments as required by this Stipulation, DTSC may proceed to pursue all rights and remedies to enforce the Judgment against Defendants in this matter which shall include foreclosing on the Lien. If DTSC determines that Defendants have defaulted under the terms of this Stipulation by failing to make a timely payment when due, DTSC will provide Defendants with written notice of default and Defendants may cure the default only on the terms set forth herein: Defendants may cure a default caused by an untimely payment by making the payment due along with a two hundred fifty dollar (\$250.00) penalty within twenty (20) days of the date the payment was due. If more than one payment is due, Defendants shall submit a separate check for each payment due. However, this cure provision shall not be used to cure more than four (4) untimely payments, and no more than one untimely payment per year.

13.6 Failure to cure a default caused by an untimely payment shall cause all costs and penalties owed DTSC under this Stipulation to be immediately due and payable, minus any payments which DTSC has already received under this Stipulation.

13.7. DTSC's failure to seek enforcement of any provision of this Stipulation shall not be deemed a waiver of any rights by DTSC, or in any way affect the validity of this Stipulation or the Judgment as to Defendants in this matter.

#### 14. DEPARTMENT NOT LIABLE

14.1. DTSC shall not be liable for any injury or damage to persons or property resulting from acts or omissions by Defendants, his employees, agents, representatives in carrying out obligations pursuant to this Stipulation, nor shall DTSC be held as a party to or guarantor of any contract entered into by Defendants, his employees, agents, or representatives in carrying out

obligations required pursuant to this Stipulation.

14.2. Defendants hereby release DTSC and the Office of the Attorney General, and their employees, representatives and agents from any and all liability, in their official or personal capacity, arising from or relating to this litigation or any inspection, enforcement or permitting activity, or other regulatory action - occurring up to the date of the execution of this Stipulation. Defendants further covenant not to sue or assert any claims or causes of action against DTSC or the Office of the Attorney General, or their employees, representatives or agents in their official or personal capacities arising from or relating to this litigation or any inspection, enforcement or permitting activity, or other regulatory action occurring up to the date of the execution of this Stipulation.

#### 5. AUTHORITY TO ENTER STIPULATION

Each signatory to this Stipulation certifies that he or she is fully authorized by the party he or she represents to enter into this Stipulation, to execute it on behalf of the party represented and legally to bind that party.

#### 6. RETENTION OF JURISDICTION

The Court shall retain jurisdiction of this matter until all of the requirements of this stipulation and Judgment have been fully satisfied.

#### 7. COMPLIANCE WITH APPLICABLE LAWS

Defendants shall carry out their obligations in this Stipulation in compliance with all local, state and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

#### 18. EQUIPMENT AND BUSINESS PREMISES ACCESS

Until such time as Defendants' facilities, including but not limited to the Newark Facility, have been certified as closed in compliance with an approved Closure Plan, access to the facility, equipment and business premises shall be provided at all reasonable times to employees, contractors, and consultants of DTSC, and any agency having jurisdiction. DTSC and its authorized representatives may enter and move freely about all property at Defendants'

facilities at all reasonable times for any purpose authorized by law, including but not limited to reviewing the progress of Defendants in carrying out the terms of this Stipulation. Defendants shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Stipulation. Nothing in this Stipulation is intended to limit in any way the right of entry or inspection that DTSC or any agency may otherwise have by operation of any law.

#### 19. REQUIREMENTS OF DTSC

The duties imposed on Defendants by this Stipulation shall be construed to be requirements of DTSC issued pursuant to the HWCL. Any violation of this Stipulation is separate and in addition to a violation, if any, of any provision of the HWCL. However, DTSC agrees that a violation of this Stipulation which is also a violation of a provision in the HWCL shall be considered a single violation for the purpose of calculating the maximum penalty authorized by Health and Safety Code section 25189 or 25189.2.

#### 20. INTEGRATION

This Stipulation constitutes the entire agreement between DTSC and Defendants regarding the matters specifically covered herein. This Stipulation may not be amended or supplemented except as provided for herein. The parties hereto acknowledge that there are no representations, agreements or understandings relating to this Stipulation other than those expressly contained herein.

#### 21. AMENDMENTS TO STIPULATION

This Stipulation may only be amended pursuant to a written agreement signed by all parties to the Stipulation and upon written approval of this Court.

#### 22. COUNTERPART ORIGINALS

This Stipulation may be executed in several counterpart originals, all of which taken together shall constitute an integrated document.

#### 23. EFFECTIVE DATE

The Effective Date of this Stipulation is the date the judgment pursuant to this stipulation is entered by the Court.

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